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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/469,982	12/21/1999	REUVEN MOSKOVICH	082771.P262	5627

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EXAMINER

NGUYEN, PHUONGCHAU BA

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 12/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/469,982

Applicant(s)

MOSKOVICH ET AL.

Examiner

Phuongchau Ba Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on RCE 10-27-03.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4,5,8,9,11,14,15 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,8,9,11,14,15 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

*Claim Rejections – 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-5, 8-9, 11, 14-15, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (6,233,613) in view of Guttman (5,898,837).

Regarding claims 1, 9, and 11:

Walker discloses a method for a probe 52/130 to negotiate a common mode of communication between two nodes (42/110 & 44/120), comprising:

a) establishing a first communication path 46a/160 between the probe and a first node 42/110 including negotiating a mode of operation with the first mode {col.2, lines 43-45};

b) establishing a second communication path 46b/150 between the probe and a second node 44/120 including negotiating a mode of operation with the second mode {col.2, lines 46-47};

c) establishing a third communication path 140 through the probe {fig.3}, the third communication path 140 coupling the first 160 and second 150 communication paths by establishing a point to point link between the first and second nodes in order to provide a negotiated common mode of operation between the first node 110 and the second node 120 by comparing the mode of operation with the first node and the mode of operation with the second node and selecting one of multiple communication paths through the probe as the third communication path to provide a common mode of operation between the first node and the second node {col.2, lines 53-64}, wherein the probe includes a bypass mode in which data bypasses the probe and a pass through mode in which data is monitored by the probe {col.2, lines 10-65}.

Walker does not explicitly disclose the probe includes a bypass mode in which data bypasses the probe and a pass through mode in which data is monitored by the probe. However, in the same field of endeavor, Guttman (5,898,837) discloses a bypass circuit embodied in the probe. Therefore, it would have been obvious to apply Guttman's teaching to Walker's system with the motivation being to avoid interruption on the communication link between

the stations connected to the probe when the probe is powered down as explicitly suggested in Walker on column 2, lines 8–13, 28–30.

Regarding claims 4, 14:

Walker further discloses wherein negotiating a mode of operation with the first node comprises negotiating a speed of a transmission of data over the first communication path between the probe and the first node {col.2, lines 48–49}.

Regarding claims 5, 15:

Walker does not explicitly disclose the claimed features. However, in the same field of endeavor, Guttman further discloses wherein negotiating a mode of operation with the first node comprises negotiating one of half duplex and full duplex communication over the first communication path between the probe and the first node {col.3, lines 9–11}. Therefore, it would have been obvious to an artisan to apply Guttman's teaching to Walker's system with the

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motivation being to allow monitoring of all traffic between the switch and network devices in either directions.

Regarding claims 8, 18:

Walker further discloses the common mode of operation between the first node and the second node is the best mode of operation available between the first node and the second node {col.2, lines 55-56}.

*Response to Arguments*

5. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchau Ba Nguyen whose telephone number is 703-305-0093. The examiner can normally be reached on Monday-Friday from 10:00 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 703-308-6602. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.



Phuongchau Ba Nguyen  
Examiner  
Art Unit 2665

December 15, 2003



STEVEN H.D. NGUYEN  
PRIMARY EXAMINER